

**UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA**

**TAYLOR M. GUDE, a minor,
by and through her parents and next
friends, TOM AND CINDY GUDE,**

Plaintiffs.

v.

**FMSJBP, LLC, a Nebraska limited liability
corporation doing business as Norman Food
Stores, Inc., HEALTH-RITE PHARMACY,
a member of Arizona cooperative United
Drugs, and
BARBARA BOSTON, R.Ph.**

Defendants.

CASE NO. 8:07-cv-_____

COMPLAINT AND JURY DEMAND

COME NOW Plaintiffs and for their cause of action against Defendants state as follows:

PARTIES; JURISDICTION

1. Plaintiff Taylor M. Gude is the minor child of Tom and Cindy Gude, her natural parents.
2. At all times relevant, Defendant FMSJBP, LLC was a limited liability corporation licensed to do business in the State of Nebraska, and was doing business in Nebraska City, Otoe County, Nebraska as Norman Food Stores, Inc. (hereinafter "Norman Foods"). Norman Foods owned and operated a store located at 2410 South 11th in Nebraska City, Nebraska.
3. At all times relevant, Defendant Health-Rite Pharmacy was a member of the Arizona cooperative of independent pharmacies United Drugs (hereinafter "Health-Rite"), and was authorized to do business in Nebraska City, Otoe County, Nebraska. Health-Rite was a pharmacy located within the store owned and operated by Norman Foods located at 2410 South 11th in Nebraska City, Nebraska.
4. At all times relevant, Barbara Boston (hereinafter "Boston") was a pharmacist licensed to practice pharmacy in the State of Nebraska, and was an employee of Health-Rite and Norman Foods.
5. At all times relevant, Health-Rite and Norman Foods were liable for the acts of Boston under the doctrine of respondeat superior.

6. Jurisdiction is proper in this Court because there is diversity among the parties, and the amount at dispute is more than \$75,000.

FACTS

7. Taylor, the natural child of Tom and Cindy Gude, was born on September 25, 2000.

8. On or about September 23, 2004, Taylor's treating physician called-in a prescription to Health-Rite Pharmacy for Taylor to be taken as prescribed. Such prescription was for one 5mg tablet of Lamictal to be taken twice a day for two weeks.

9. On or about September 23, 2004, said prescription was incorrectly filled with 25 mg tablets of Lamictal due to the negligence of Barbara Boston, whose negligence is imputed to Health-Rite and Norman Foods under the doctrine of respondeat superior.

COUNT I.

10. As a result of the Defendants' negligence, Taylor suffered serious personal injury and harm to her person, including, but not limited to, increase in number and increase in intensity of seizures, and sustained permanent injuries.

11. Plaintiffs have incurred medical expenses as a result of Taylor's injuries, and Plaintiffs will continue to incur medical expenses into the future.

COUNT II.

12. As a result of the personal injuries sustained by their minor child, Tom and Cindy Gude have incurred medical expenses and will continue to incur medical expenses in the future.

WHEREFORE, Plaintiffs pray for a judgment against all Defendants for their general and special damages in accordance with Nebraska law.

July 26, 2007.

TAYLOR M. GUDE, a minor, by and through her
parents and next friends, Tom and Cindy Gude,
Plaintiffs,

By: /s/ Melany S. Chesterman

Melany S. Chesterman, #20044

HAUPTMAN, O'BRIEN, WOLF & LATHROP, P.C.

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